IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Ramesh Chandra vs. Registrar, Stamp & Collector,Rajsamand & Ors.

(S.B.Civil Writ Petition No. 2558/2007)

Date of Order:- 1.11.2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.B.L.Choudhary, for the petitioner.
Mr. B.L.Tiwari, Dy.G.A.

BY THE COURT:-

This writ petition is directed against judgment dated 22.1.2007 passed by District Collector(Stamp), Rajsamand, whereby an appeal preferred by the petitioner against the order dated 15.10.2005 by Sub Registrar, Railmagra in exercise of the power conferred u/ss 23, 35 and 58 of Indian Registration Act, 1908(in short "the Act of 1908" hereinafter) has been dismissed.

The petitioner purchased land ad measuring 11 bighas 3 biswas comprising khasra nos. 1722, 3466/1722, 2449, 1939 and 1917 village Railmagra, district Rajsamand, owned by respondent no. 3 Chhoga Lal , respondent no. 4 Jagdish and respondent no. 5 Smt. Chunni(hereinafter referred as "the vendors"). A sale deed was executed by the vendors in favour of the petitioner on 25.5.05. After execution of the sale deed,

the vendors avoided to get the sale deed registered , therefore, the petitioner made an application to Sub Registrar, Railmagra on 15.9.2005 and presented the sale deed for registration. The Sub Registrar issued notice to the vendors who in their turn filed the reply to the application and denied the averments made therein. The vendors admitted the execution of the sale deed but, stated that they have not received the consideration for sale. Accordingly, the sale deed was returned by the Sub Registrar to the petitioner with the endorsement that the vendors have accepted the execution of the sale deed but, have stated that they have not received the consideration. Aggrieved by the aforesaid endorsement dated 15.10.05, the petitioner preferred an appeal before the District Collector(Stamp), Rajsamand. The Appellate Authority arrived at the finding that the Sub Registrar has rightly refused to register the document .

It is contended by the learned counsel for the petitioner that the learned Appellate Authority has mis-read and mis-interpreted Section 58 of the Act of 1908. The learned counsel contended that the registering authority has no power to enforce payment of any consideration as a condition precedent for reregistration of the document.

Per contra, the counsel appearing for the respondents urged that since the vendee has not received the consideration under the sale deed sought to be registered , therefore, the

order passed by the Sub Registrar affirmed by Appellate Authority District Collector(Stamp), Rajsamand is in conformity with the provisions of Section 58 of the Act of 1908 read with Rule 40 of Rajasthan Registration Rules, 1955 and does not suffer from any infirmity or illegality.

I have considered the rival submissions.

The controversy involved in the instant petition rolls around the provisions of Section 58 of the Act of 1908 which reads as under:-

> "58. Particulars to be endorsed on documents admitted to Registration:-(1) On every document admitted to registration, other than a copy of a decree or order, of a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely:
>
> (a) the signature and addition of every person admitting the execution of the document, and if such execution has been admitted by the representative, assign or agent, of any person the signature and addition of such representative, assign or agent;
> (b) the signature and addition of every person examined in reference to such document under any of the provision of this Act; and
> (c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admissio of receipt of consideration, in whole or in part, made in his presence in reference to such execution.
> (2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal."

A bare perusal of the sub-section(2) of Section 58 of the Act of 1908 goes to show that if any person admits the execution

of a document but refuses to endorse the same then, the registering authority is under an obligation to register the document while endorsing a note of such refusal. The registration of the document on account of denial of whole or part of the consideration cannot be refused. Even , Rule 40 referred to by the counsel for the respondents specifically provides that if any persons admits the execution of a document presented for registration, but denies the receipt in whole or part consideration decided therein registration shall not be refused because of such denial but a note of denial shall be made in the endorsement required by Section 58. As a matter of fact, whether a statement contained in the document regarding payment of consideration is true or not is not a matter for the registering authority to examine and decide. Thus, the Sub Registrar was not justified in refusing to register the document on account of denial by the vendor the receipt of the consideration . The learned Appellate Authority has failed to appreciate the provisions of Section 58 in correct perspective. Thus, the orders impugned are not sustainable in eye of law.

In the result, the writ petition succeeds . It is hereby allowed with no order as to costs. The endorsement dated 15.10.2005 made by the Sub Registrar, Railmagra, on the sale-deed (Annexure 4) and order dated 22.1.2007(Annexure 8) passed by the District Collector(Stamps), Rajsamand are

quashed. The Sub Registrar, Railmagra is directed to register the sale deed while making an endorsement required by Section 58 of the Act of 1908.

(SANGEET LODHA),J.